

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
DISTRICT COURT STATE OF OKLAHOMA

JOEL J. REED, Et Al.,

Plaintiff,

Vs.

STATE OF OKLAHOMA, EX REL
THE DEPARTMENT OF AGRICULTURE
FOOD AND FORESTRY,

Defendant.

Case No. CJ-2005-8975

COPY

DEPOSITION OF JIM LANCE PIGEON
TAKEN ON BEHALF OF THE DEFENDANT
ON MAY 9, 2006
IN KANSAS, OKLAHOMA

APPEARANCES:

MR. D. KENYON WILLIAMS, JR., Hall & Estill, 320 S.
Boston Avenue, Suite 400, Tulsa, Oklahoma 74103-3708,
appearing on behalf of the Plaintiffs.

MR. M. DANIEL WEITMAN, MS. ELLEN A. PHILLIPS, MS.
KELLY BURCH, Attorney at Law, 4545 North Lincoln
Boulevard, Suite 260, Oklahoma City, Oklahoma 73105,
appearing on behalf of the Defendant.

MS. NIKI CUNG, Kutak Rock, LLP, 214 W. Dickson
Street, Fayetteville, Arkansas, 72701, apprearing on
behalf of Tyson Foods.

MS. NICOLE M. LONGWELL, Joyce, Paul & McDaniel, 1717
South Boulder, Suite 200, Tulsa, Oklahoma, 74119,
appearing on behalf of Peterson Farms.

REPORTED BY:

SUSAN R. ROGERS, C.S.R.

Susan Rogers, CSR
Steve Meador & Associates



1 JIM LANCE PIGEON

2 Having been duly sworn, testified as follows;

3 DIRECT EXAMINATION

4 BY MR. WEITMAN:

5 Q. State your full name for the record, please.

6 A. Jim Lance Pigeon.

7 Q. Jim Lance Pigeon?

8 A. Yes.

9 Q. What's your address, sir?

10 A. Address, 24599 Van Fleet Road.

11 Q. What town is that?

12 A. Siloam Springs, Arkansas.

13 Q. What's your date of birth?

14 A. 4-12-71.

15 Q. Are you married?

16 A. Yes.

17 Q. Do you have children?

18 A. Yes.

19 Q. How many?

20 A. Three.

21 Q. What are their ages?

22 A. Ten, seven, three.

23 Q. Do you have a poultry operation?

24 A. Yes.

25 Q. Is there a name of your operation?

1 mean, whether it be poultry litter, commercial
2 fertilizer, cattle grazing, defecating, urinating
3 on the soil. Nutrients applied to the soil are
4 applied to the surface.

5 Q. Who is your integrator?

6 A. Tyson.

7 Q. Have they been your integrator since you
8 started your chicken operation?

9 A. No.

10 Q. You had a previous integrator?

11 A. Yes.

12 Q. Who is that?

13 A. Peterson.

14 Q. During what period of time was Peterson your
15 integrator?

16 A. December of '95 to February or March of
17 2004.

18 Q. Why did you switch?

19 A. Because my job with Green Country Farms.

20 Q. Okay. You need to explain that to me a
21 little bit more. Why did your job effect who your
22 integrator is?

23 A. It is not kosher, if you will, for the
24 poultry companies to work in poultry for one
25 integrator and raise poultry for another, because

1 of disease and bio security issues.

2 Q. Is Green Country Farms, are they a Peterson
3 operation?

4 A. No, they are a Tyson operation.

5 Q. That's right. You said you have two houses
6 in your chicken operation?

7 A. Yes.

8 Q. Is your chicken complex fenced off from the
9 rest of your property?

10 A. Yes.

11 Q. What type of fence is used?

12 A. Just a barbed wire fence.

13 Q. Three strand, five strand?

14 A. Five, six, plus a hot wire.

15 Q. The hot wire on top?

16 A. In the middle.

17 Q. Is your house located within the chicken
18 complex or outside the chicken complex?

19 A. Outside.

20 Q. How close is your house located to the
21 chicken complex?

22 A. Approximately 700 feet to the south.

23 Q. The barbed wire fence surrounding your
24 chicken complex, how close is that to the chicken
25 complexes?

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

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THE DEPOSITION OF JIM LANCE

PIGEON, produced as a witness on behalf of the
Plaintiff in the above styled and numbered cause,
taken on the 25th day of May, 2007, in the City of
West Siloam Springs, County of Delaware, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Richard Garren
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Tulsa, OK 74119
-and-
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222 South Kenosha
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FOR POULTRY PARTNERS:

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1 FOR GEORGE'S:

Mr. Paul Thompson
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221 North College
Fayetteville, AR 72701

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1 (Whereupon, the deposition began at
2 9:03 a.m.)

3 JIM LANCE PIGEON
4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GARREN:

9 Q Mr. Pigeon, would you please state your full
10 name and residence address to the court? 09:03AM

11 A Jim Lance Pigeon. Residence address is 24599
12 Van Fleet Road, Siloam Springs, Arkansas.

13 Q All right, and are you a married man?

14 A Yes.

15 Q Your wife's name is what? 09:03AM

16 A Michele, M-I-C-H-E-L-E.

17 Q And she lives there with you at that address?

18 A Yes.

19 Q Is that also the same address for your poultry
20 farm operation? 09:04AM

21 A Yes.

22 Q Excluding your poultry farm operation, are you
23 employed by any other entity or person?

24 A Yes.

25 Q And who or what is that? 09:04AM

1 grower in December of '95?

2 A No. It was prior to that.

3 Q Prior to that?

4 A Yes.

5 Q All right. Identify, if you would, please, 09:15AM
6 each of the integrators that you have worked for in
7 providing poultry growing operations.

8 A I don't think I understand.

9 Q Have you had more than one integrator that you
10 provided poultry products to? 09:16AM

11 A Yes.

12 Q All right. Name those entities.

13 A Peterson Farms and Tyson Foods.

14 Q What were the years that you operated a farm
15 for Peterson Farms? 09:16AM

16 MR. BOND: Object to the form.

17 A I believe I raised chickens for Peterson from
18 December of '95 to February or March of 2004.

19 Q And that was a continuous time frame that you
20 worked growing chickens, providing chickens to 09:16AM
21 Peterson Farms?

22 A Yes.

23 MR. WILLIAMS: What was the date again;
24 from when to when? I'm sorry.

25 MR. GARREN: He testified 12-95 to 2 or 3 09:16AM

1 of '04.

2 Q Did you immediately then begin producing
3 poultry products for Tyson on or about February or
4 March of '04?

5 A Yes, I did.

09:17AM

6 Q And have you continuously worked then for
7 Tyson -- have you continuously grown chickens for
8 Tyson since that time?

9 A Yes, I have.

10 Q Let me hand you what's been marked as Exhibit
11 No. 1 and this I'll represent to you is a copy of
12 the subpoena with the attachment that was provided
13 to your counsel. Have you seen this document
14 before?

09:17AM

15 A Yes, I have.

09:17AM

16 Q I'm going to refer you to the exhibit that's
17 attached to that document and I'd ask you to tell me
18 if there's any category by the number listed there
19 that would indicate documents you either did not
20 find or did not produce in your document production
21 pursuant to the subpoena.

09:18AM

22 A Okay. I'm sorry. Could you repeat your
23 question?

24 Q What I'm trying to determine is what documents
25 you didn't have or you didn't produce and then I'm

09:22AM

1 A I don't recall.

2 Q Do you recall who you sold it to?

3 A I believe I sold that litter to Raymond
4 Tinney, which was funded through the grant, the
5 BMP's grant.

10:07AM

6 Q And you would have then filled out forms in
7 order to get that subsidy when you made that sale;
8 is that correct?

9 A I believe so, yes.

10 Q All right, and your testimony here today is
11 that you've not done that in 2007 but you did it in
12 '06?

10:08AM

13 A I believe that's correct.

14 Q All right. Do you know where Raymond Tinney
15 took that waste?

10:08AM

16 MR. BOND: Object to form.

17 A I believe I saw on some of the paperwork that
18 it went to a Robert Ross.

19 Q All right, and do you know that person?

20 A I do not.

10:08AM

21 Q Do you know where that person's location was
22 that it was delivered to?

23 A I do not.

24 Q That's not information you're provided when
25 you sell waste through the BMP's program?

10:08AM

1 MR. BOND: Object to form.

2 A No.

3 Q Other than in the BMP program, have you sold
4 waste in the past since you've operated your
5 operation there in Section 7?

10:09AM

6 A Yes, I have.

7 Q And when you sold it, who would you normally
8 sell it to?

9 A I have several times sold litter to Flint
10 Creek Cattle Company.

10:09AM

11 Q All right. Is that an operation near your
12 operation?

13 A Yes, it is.

14 Q All right, and when you sold it, did you
15 deliver it or did they come and pick it up?

10:09AM

16 A I hired a contractor to come in and clean the
17 houses and deliver the litter to Flint Creek Cattle
18 Company.

19 Q Do you remember who your contractor was?

20 A I've had multiple contractors over the years.

10:09AM

21 Q All right. So Flint Creek has been a fairly
22 constant customer if you sold litter or waste?

23 A They have been, yes.

24 Q All right. Is there any other customer that
25 you've sold to besides Flint Creek?

10:10AM

1 MR. HIXON: Object to form.

2 A I'm sorry, could you ask that again?

3 Q Do the service techs advise you on changes you
4 should make in your growing operation when they come
5 to see you?

10:43AM

6 MR. HIXON: Object to form.

7 A Yes, they would.

8 Q Is that the same for both Peterson and Tyson
9 in your experience?

10 MR. BOND: Object to form.

10:44AM

11 A Yes.

12 Q When a service rep would come to your farm, is
13 it typical that on the report that they fill out it
14 shows where they have checked the temperature and
15 the controls of the temperature of the barns?

10:44AM

16 MR. BOND: Object to form.

17 A What are you asking?

18 Q Do the service techs check the temperature in
19 the barns when they come and inspect your
20 facilities?

10:44AM

21 A Yes.

22 MR. BOND: Object to form.

23 Q And does Peterson and Tyson both do that,
24 their service reps?

25 A I'm sure they do, yes.

10:44AM

1 Q And do the service reps for both Tyson and
2 Peterson when they inspect check the ventilation of
3 the barns?

4 MR. HIXON: Object to form.

5 A I'm sure they do, yes. 10:45AM

6 Q All right. Do you know that they do that or
7 are you just surmising?

8 A I assume that they all do, having been a
9 service tech myself.

10 Q And they leave reports sometimes checking 10:45AM
11 where they have checked the box where the
12 ventilation is good or poor for something like that;
13 correct?

14 A Sometimes they do, yes.

15 Q All right. When the service reps come, do 10:45AM
16 they check the water supply to the birds?

17 MR. HIXON: Object to the form.

18 A I can't say whether they do or not.

19 Q Do they indicate on any kind of form that they
20 have when they've left the form with you after an 10:45AM
21 inspection?

22 MR. HIXON: Object to form.

23 A I think there is a spot on the service report
24 for that, but to know exactly or specifically that
25 they have checked, I can't say. 10:46AM

1 guidance?

2 MR. HIXON: Object to the form.

3 A Not necessarily.

4 Q All right. So do you have your own checklist

5 for chick placements or do you follow the one that's 11:43AM

6 set forth on Page 376 of this manual when you were

7 working for Peterson?

8 MR. HIXON: Object to the form.

9 A I don't have a per se checklist. I've always

10 been a good grower and I know what needs to be done 11:43AM

11 and I make sure it gets done.

12 Q And are the items that are listed on the

13 right-hand page where it says chick placement

14 checklist, are those items that are listed there

15 things you do? 11:44AM

16 A Absolutely.

17 Q All right.

18 A And then some.

19 Q Looking at Page 378, if you would, sir,

20 suggestions for management in the lower right-hand 11:44AM

21 corner of the column; do you see that heading?

22 A Yes.

23 Q Looking briefly at those, those are

24 essentially the same things that we saw itemized on

25 that service tech report, aren't they, the same 11:44AM

1 consider a better sample one that might reflect a
2 lower STP level; is that a fair statement?

3 MR. WILLIAMS: Object to the form.

4 MR. BOND: Object to the form.

5 MR. HIXON: Object to the form. 02:35PM

6 A I don't know that that would necessarily mean
7 that it's a better sample, that it has a lower
8 number.

9 Q But you understand based on your testimony
10 here today that the level of phosphorus in the soil 02:35PM
11 would be higher at the two-inch level than it would
12 be at the six-inch level; is that correct?

13 A That's correct.

14 Q And you control where land application occurs
15 on your land, do you not? 02:35PM

16 A Yes.

17 Q And you pretty much know where the bulk of it
18 goes, do you not?

19 A Well, yes.

20 Q The same would be true for most any grower who 02:35PM
21 is in the same situation as you are, land applying
22 his own waste; correct?

23 A Sure.

24 Q And frankly, it would be easy enough to go to
25 certain parts of the field to pull your cores and 02:35PM

1 A We're paid based on how well the birds
2 perform, basically how well I do my job in getting
3 the birds to market.

4 Q And that's a question I have for you. If you
5 can, describe for me what is your job with respect 02:57PM
6 to those birds.

7 A My job is to provide those birds with the
8 best, healthiest environment that I can and raise
9 those birds with the cheapest cost, least amount of
10 feed, least amount of electricity, least amount of 02:58PM
11 fuel and still raise a healthy bird and get them to
12 the processing plant.

13 Q And I know I've heard you testify that you've
14 got a service tech for Tyson?

15 A Yes. 02:58PM

16 Q Who is your service tech?

17 A John Kyle.

18 Q Okay, and does he come out and make
19 recommendations on how to help you achieve the goal
20 you just described? 02:58PM

21 A Yes, he does.

22 Q Do you always follow those?

23 A No, I do not.

24 Q Sometimes you do exactly what you think you
25 should do? 02:58PM

1 MR. GARREN: Object to the form.

2 A Yes, I do.

3 Q Okay. He's never withheld birds from you for
4 doing that; right?

5 A No, he has not.

02:58PM

6 Q Does Tyson tell you when to cack out your
7 houses?

8 A No, they do not.

9 Q Does Tyson tell you when to clean out your
10 houses?

02:59PM

11 A No, they do not.

12 Q Does Tyson tell you where to land apply
13 poultry litter?

14 A No, they do not.

15 Q If you can, would you turn in the binder,
16 Exhibit 2, to Page 338, and I think you talked about
17 that with Mr. Garren a little while before and the
18 title of that document is animal waste management
19 plan and it says Jim Pigeon poultry operation; is
20 that right?

02:59PM

03:00PM

21 A Yes.

22 Q I think you previously testified that you to
23 the best of your ability try to follow this plan?

24 A Yes.

25 Q Okay. Did you write this plan?

03:00PM